

**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

Name Hernandez morales Elias  
(Last) (Initial)

Prisoner Number 72342-008

Institutional Address P. O Box 4000, Springfield miss.  
65801

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

Elias Hernandez morales  
(Enter the full name of plaintiff in this action.)

vs.

Marty Anderson, Warden  
U.S. Medical Center for Federal  
Prisoners

Springfield, mo

(Enter the full name of respondent(s) or jailor in this action)

CV 08

2238

Case No. 4400 SL  
(To be provided by the clerk of court)

**PETITION FOR A WRIT  
OF HABEAS CORPUS**

E-filing

(PR)

**Read Comments Carefully Before Filing In**

**When and Where to File**

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or  
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which  
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper  
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief  
 7 but may be subject to such custody in the future (e.g., detainers), you must name the person in whose  
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack  
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda  
 13 County Superior Court, Oakland):

14 Del Rio Tx. 111 broad way 78240TX  
 15 Court Location

16 (b) Case number, if known 094400 SL

17 (c) Date and terms of sentence I broke in status

18 (d) Are you now in custody serving this term? <sup>looking for</sup> (Custody means being in jail, on  
 19 parole or probation, etc.) Yes ☒ No ☐

20 Where?

21 Name of Institution: Springfield miss. Medical Center

22 Address: Springfield miss. P.O. Box 4000-65801

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for  
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are  
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Cause. Or Steward for INS.  
 27 Alien Immigration. Immigration  
 28

3. Did you have any of the following?

Arraignment:

Yes ☒ No ☐

Preliminary Hearing:

Yes ☐ No ☒

Motion to Suppress:

Yes ☐ No ☒

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) Guilty held.

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial?

Yes ☒ No ☐

7. Did you have an attorney at the following proceedings:

(a) Arraignment

Yes ☒ No ☐

(b) Preliminary hearing

Yes ☐ No ☒

(c) Time of plea

Yes ☐ No ☒

(d) Trial

Yes ☐ No ☒

(e) Sentencing

Yes ☐ No ☒

(f) Appeal

Yes ☒ No ☐

(g) Other post-conviction proceeding

Yes ☒ No ☐

8. Did you appeal your conviction?

Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal

Yes ☒ No ☐

Year: 2006

Result:

Supreme Court of California

Yes ☒ No ☐

Year: 2007

Result: Docketed Chief. face

Any other court

Yes ☒ No ☐

Year: 2007

Result: I state for Trial.

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes ☒ No ☐

(c) Was there an opinion?

Yes ☒ No ☐

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes ☒ No ☐

If you did, give the name of the court and the result:

Room 8112 110 South Church Ave.  
Tucson, AZ 85701-16

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☒ No ☐

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

- I. Name of Court: SAN JOSE CA 1st Room 280295113  
 Type of Proceeding: 2255 motion trial. appeal  
 Grounds raised (Be brief but specific):  
 a. The APPEAL, 2255.  
 b. Have. Indictment.  
 c. Case: enter but not Seender  
 d. for Case APPEAL.  
 Result: Cross-APPEAL Date of Result: 2002
- II. Name of Court: TUCSON, AZ. Room 8112, 110 Church  
 Type of Proceeding: Case: Arly 400 SL  
 Grounds raised (Be brief but specific):

- a. Loss or waiver of right  
 b. to Intervene.  
 c. Estoppel or duty to intervene.  
 d. dection of remedies

Result: notice of Arrignment Date of Result: 14-2-07  
 or S.B.A.

III. Name of Court: Del Rio tx.

Type of Proceeding: Motion Habeas Corpus 2255-2254.

Grounds raised (Be brief but specific):

- a. 40, 70 AM Juv 2d. Pensions and  
 b. Retirement Funds. 456, 462  
 c. \_\_\_\_\_

d. affidavit

Result: B3, ALR Fed. 16 Date of Result: 14-2-07

IV. Name of Court: SAN FRANCISCO CA

Type of Proceeding: General Principles 1-4

Grounds raised (Be brief but specific):

- a. 41 AM Juv Social. Security  
 b. and Medicare 1037 - 1140.  
 c. Student loans  
 d. FDIC Actions.

Result: Rule 17 J. Personal Earnings Date of Result: 4-4-07

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes ☒ No ☐

Name and location of court: del Rio "Brooklyn" 78840

#### B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Annotations Modern Status and Appl.  
6 ation of rule that only voluntary transfer  
7 Supporting Facts: 1946 (Soil Conservation benif  
8 fits.)

10  
11 Claim Two: 34- Restatement (Seco. cl/ of Cent Act  
12 7d 324- Commerce

13 Supporting Facts: Youngberg v El Paso Brick  
14 Co. 155 SW. 2d 15 Tex. Civ. App. 41  
15 Paso 1913.

16  
17 Claim Three: 42 - 53 Am Jur. 2d Military and  
18 Civil Defense 179.

19 Supporting Facts: Form 5: Answer - Denial  
20 of Assignment - No  
21 execution or delivery of instrument  
22 2 Am Jur PLy Pr Forms (Rev) Assignment  
23 Form 8

If any of these grounds was not previously presented to any other court, state briefly which

24 grounds were not presented and why:

25 order to Pay Proceed of Purchase order 2am  
26 effect Various Statutes/legal form 2d Assignment  
27 C. Delivery or transfer 131-134 Research 15,165  
28 References ALR Digest: Assignment 12, 15

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

194-0052 Cr. 4142 RMW.  
5,30400 CV:

Do you have an attorney for this petition?

Yes ☒ No ☐

If you do, give the name and address of your attorney:

Blvd. Veterans.  
Manuel Pacheco 1700 Du. de los Arbores de Rio TX.

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on

3-4-08

Date

Ches. Hernandez m.

Signature of Petitioner

(Rev. 6/02)



A, 215 United States Courthouse 111,  
East Broadway Street Del Rio TX. 78840-5573

38. Surprise.

alias hernandez morales #72347-008 2255.2460  
142. Withdrawal of application or petition  
Research References 912 - 920,  
West, Key Number Digest, Aliens 40, 60. 1 215. Sentencing  
40.8 wages.

doked; cr 9400 sl

The applicant or petitioner may withdraw an application or petition  
at any time until a decision is issued by the INS! or, in the case  
of an approved petition, until the person is admitted or granted  
an adjustment or change of status based on the petition.  
Caution: A withdrawal may not be retracted. Withdrawal of an application  
or petition does not preclude the filing of a new application or  
petition with a new fee. However, the priority or processing date  
of a withdrawn application or petition may not be applied to a later  
application or petition. Although the withdrawal itself does not  
affect the new proceeding, the facts and circumstances surround-  
ing the prior application or petition are otherwise material  
to the new application or petition.

Effect of appeal to BIA; stay of execution of appealed deci-

sion  
Research References 4. Other Payments, Acts, or Commissions.  
West's Key Number Digest, Aliens 40, 60

once an appeal is filed with the BIA, any motions thereafter must  
be directed to the BIA, the only exceptions being where there is  
a withdrawal of the appeal.

with the exception of an order by an immigration judge denying  
a motion to reopen or reconsider or a motion to stay deportation,  
or other stated exceptions, the decision in any proceeding from  
which an appeal to the board of immigration Appeals (BIA) has been taken  
is not executed during the time allowed for the filing of an appeal  
unless a waiver of the right to appeal is filed. Furthermore, the  
decision will not be executed while an appeal is pending or while a ca-  
se is before the BIA by way of certification. However, a stay of  
execution of a deportation order requires that the appeal to the  
BIA be timely filed.

b. Representation and Appearance

31 F Supp 2d 424.

\$. 50,000 for representing one appellant in capital murder direct  
appeal, or

\$. 15,000 for representing one petitioner or movant in death penalty

habeas case at the appellate level.

counsel's time is compensated at a rate within a range of \$ 75 to

\$160 per hour.

36 - Removal.

464,481 noise of Plan 129 L. Ed 2d 133

2112. 124. L. Ed 306

18. U.S.C 3006 A (a) (1) or (2)

3002. Court + S. always open rule.

Distinguished in Gilmore v Taylor, 508 U.S. 333. 113 S. Ct



27 consumer product warranty Act

#### Research References

West's Key Number Digest, ALternative Dispute Resolution 114

Congress has enacted legislation to encourage warrantors of the consumer products to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

#### III. APPLICATION TO PARTICULAR DISPUTES

#### Research References

7 specialized courts

#### Research References

West's Key Number Digest, Federal courts 491, 492

pursuant to constitutional authority, the supreme court has been granted jurisdiction by congress to review various decisions of the federal courts other than the courts of appeals and the district courts including, for example, the court of appeals for the Armed forces. In addition, the foreign Intelligence surveillance Act provides for review by the supreme court by writ of certiorari of certain decisions of the Foreign Intelligence surveillance court.

#### 2. state court Decisions

##### a. General principles

McKesson corp. v. Division of Alcoholic Beverages and tobacco, Dept. of Business Regulation of Florida, 496 U.S. 18. 110 S.Ct. 2238, 110 L. ED. 2d 17 (1990)

#### TRANSMISSION OF THE RECORD

#### 4. BRIEFS ~~briefs~~ 2283.

In addition to other pertinent Rules of Appellate procedure, the following provision shall apply to appeals taken from proceedings recorded by videotape:

a. citation. tape reference. Each citation to portions of video recorded proceedings shall be to the date and time the event occurred, as printed on the videotape. such references in a brief to a segment of the videotape recordings (hereinafter referred to as a tape reference) shall set forth in parentheses the word "tape". the number of the videotape, and the month, day, year, hour, minute and second at which the videotape. (For example; TAPE No 1; 12/02/88; 13:24:06)

b. Record Excerpts. Record excerpts shall adhere to the procedures set forth the October 15, 1990 revision of local rule 30.1 except that no more than 25 pages of the allowable 40 pages of optional contents (30.1.6.) may be transcript pages of the proceeding.

In the event videotape is submitted as part of the record excerpts, the videotape must be certified original recording or copy provided to the parties by the clerk of the district court.  
(C) judges subject to the procedure.

### 3.2 joint NOtice of Appeal

when parties have filed a joint notice of appeal, only one appeal will be docketed and only one docketing fee paid. parties filing a joint notice of appeal shall file a single consolidated brief and appendix.

source; None

cross-references FRAP 3 (b), 28(i), 31

comments: New provision.

### 3.3. payment of fees

source: None

cross-references FRAP 4

committee comments: New provision. This rule has been added to emphasize that a request for an expedited appeal should be made promptly.

### FRAP 5. Appeal by permission

(For text of rule, see Federal Rules of Appellate procedure.)

LAR 5.0 Appeal by permission under 28 u.s.c. § 1292(b) \*Abrogated\*

5.1 petition for permission to appeal \*Abrogated\*

Reason for elimination of LAR. 5.1. Fed. R. App. p. 5(b). which sets forth the contents of a petition for permission to appeal, requires that the petition include "the question itself." This requirement makes LAR. 5.1 unnecessary.

FRAP 5.1. Appeal by leave under 28 u.s.c. § 636(c)(5) \*ABROGATE\*

## D. DEFINITIONS

## III. DEFINITIONS

A. CJA The Criminal Justice Act.

18 USC 3006A

## IV. CJA PANEL

### INTERPRETIVE NOTES AND DECISIONS

under former rule, extension of time for filling bill of exceptions did not take the place of the requirement for filing the transcript record return day or within such additional time as may be granted

by the district judge or a judge of the appellate court. united states v mosley (1934, CA 5 Miss) 68 F2d 372.

A federal court of appeals has the power, in the exercise of its discretion, to extend the time for filing and docketing record on appeal even though the time prescribed has expired, united states v bowen (1962, CA5 Fla) 310 F2d 45, 6FR serv 2d 1228.

31. 2-- ~~briefs~~ time for filing Briefs of Intervenors or Amicus curiae. The time for filing the brief of the intervivor or amicus is extended until 7 days after the filing of the principal brief of the party supported by the intervivor Or amicus.

### INTERNAL OPERATING PROCEDURES

see also 5th cir. R31. 2.

FRAAF 2). APPENDIX TO the Briefs

(FOR text of rule, see Federal Rules of Appellate Procedure.)

### PLAN FOR REPRESENTATION ON APPEAL UNDER THE CRIMINAL JUSTICE

ACT

(Effective January 1, 1996; Revised February 1, 2005)

(Effective March 1, 1991)

#### 1. APPLICATION

#### 66. protest demonstrations

Free exercise of religion does not entitle nuclear weapons property in accordance with their religious beliefs. united states v Allen (1985, CA2 NY) 760 F2d 447.

(FDCPA)

190. legal. actions by debt collectors  
Research References.

west Key Number Digest, Consumer Protection  
-10

**RULE 7. review by the judicial concil**

The judicial concil may, consistent with 28 u.s.c. § 352 (d), delegate the review process to rotating panels drawn at random with power to act on behalf of the full council.

(A) mail voting. if the judicial council does not opt to act through rotating panels, the following procedures shall apply:

(1) Each member of the judicial council will vote to either affirm the chief judge's disposition or place the matter on the agenda of a meeting of the judicial council.

(2) votes will be tabulated by the active circuit judge who is most senior in date of commission and not disqualified.

(3) in the event that all council members are disqualified, a petition for review will be referred to the judicial conference of the united states.

(4) if more than two-thirds of the votes are to affirm, the chief judge's order will be affirmed. if as many as one-third of the members vote to place the petition on the agenda it will be scheduled for the next meeting of the judicial council.

(B) vote at judicial council. Action by the judicial council shall be by majority vote of the members present and voting.

(C) Notice of council decision. (1) The order of the judicial council, together with any accompanying memorandum, will be provided to the complainant and the subject judge.

(2) The petitioner will be notified that the law provides for no further review of an unfavorable decision.

(3) If the order of the judicial council affirms the chief judge's disposition, a supporting memorandum will be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation.

(D) public availability of judicial council decision. Materials related to the judicial council's decision will be made public only in the manner set forth in rule 16.

(Amended oct 1, 1994; Nov. 22, 1996; July 15, 2003.)

# Federal Court Decisions

## a Court Appeal, Decisions

noticia of APPEAL. 5 effect Award  
170 Dividends

24. Freedom of Information Act.

40. Unloaded firearm

1184. plea.

An objection to Process is not Available on  
Appeal. Unless the Party has Placed his Objec-  
tion upon the record by a regular plea. Toland  
v. Sprague. 12 Pet 300.

9 L. Ed. 1093

207. Property of Person under Guardianship.

34. State v Hough 585 N.W 2d 393 (Minn. 1998)  
Annotations: Teacher's civil liability for adminis-  
tering Corporal Punishment to Pupil, 43  
A.L.R. 2d 469 7 (a) 83. Thompson v Johnson 180

72d Cir. 1950. (applying Mississippi law) Martin v Ebert,  
431 S.W. 245 wis. 341 13 N.W 2d 907, 152 A.L.R. 1142  
(1944)

16 12 in equity  
Assignments of error based upon the refusal of  
Instructions in a suit in equity in which the  
Verdict is only advisory to the Court cannot be  
entertained on Appeal Mc Kinley Creek U.S  
563 22 S. Ct 84 246 L. ed. 1331.

1314. Civil to restrain harassment of a victim or witness.

(a) (1) A United States district court upon applicable

(1) EFFECT OF AND FURTHER PROCEEDINGS  
PER REVIEW SUPERSEDES STAY, OR  
INJUNCTION.

2. RIGHT TO AND AUTHORITY TO  
GRANT. SUPERSEDES, STAY, OR INJUNCTION

4.13, Generally  
TITLE II APPEAL FROM A JUDGMENT OR ORDER  
OF A DISTRICT ~~Court~~ Court

Rule 3. APPEAL. as OF RIGHT How

(a) filing the notice of appeal.

Bankruptcy. 10. Collier on Bankruptcy  
(to ~~Collier~~ Matthew Bender 15th ed rev)  
Ch 8019 Suspension of Rules in Part XIII  
8019.01. 8019 RH.

1470. Transfer obscene material to minors.

28. Hasbro, Inc. v Seratino 958 F. Supp. 19  
 (D. Mass. 1997). related reference, 966 F. Supp.  
 108 (D. Mass. 1997) related reference, 37 F.  
 Supp. 2d 94 (D. Mass. 1994.)

29. Weston Compagnie de finance et d.  
 Investissement S.A. v LA Republica del Ecuador  
 823 F Supp. 1106 (S.D.N.Y. 1993). related reference  
 1993 WL 267282 (S.D.N.Y. 1993)-related reference  
 1993 WL 287644 (S.D.N.Y. 1993) (Applying New  
 York law.

Forms: Answer - Denial of Assault and battery  
 2A Am Jur P1 y Pr Forms (Rev) Assault and Battery  
 Form 201.

By Wright v Starr 42 Nev. 441 174 P 877.  
 6 ALR 981 (1914)

85. 61A Am Jur. 2d. Pleading 287  
 186, Restatement and Uniform.  
 Commercial. Code.

UCC. 2-210 Involving delegation of Perfor-  
 mance and Assignment of rights was significantly  
 amended in 2003, as was the official Commentary.



1468. Distributing obscene material by cable or subscription television.

124. Restatement rule

• IV. FORM AND REQUISITES 113-143

• A. in General. 113-127

III. notice to debtor

ASSESSMENTS FOR Public Improvements  
See See Special or local. Assessments.

Docket C-9400 SL

Elias. Hernandez. m.

723 47-008

Alien Immigration.

2322. United States as Party

All actions specified in section 2331 of this title shall be brought by or against the United States (June 25, 1948 C. 1948 C-46 62 stat 969.)

15. State or territorial. Control.

Research References

41 Am Jur 2d Indians 47-50

402. Case 5:08-cv-02238-RMW Document 1 Filed 04/29/2008 Page 17 of 36  
As used in this Chapter the term Judicial Officer means a United States district Court Judge or a United States magistrate Judge.

Codde Pub. L. 101-650 title I 103 (a) title III 321  
Dec. 1 1990, 104 stat. 5046-5117.

Historical. AND STATUTORY NOTES.

United States magistrate. in text pursuant to Section 321, of Pub. L. 101 Set out as anate under. 28 U.S.C. 631.

GOOD WILL  
SCOPE OF TOPIC: This topic the ~~over~~ Advantage or benefit acquired in consequence of the Public Patronage of, or Public esteem for, an established business.

Treated elsewhere is good will as an element to be considered in the fixing of Public utility rates (See Public utilities).

40. Priorities of Creditors.

Research References.

37. Am Jur. 2d. Fraudulent Conveyances and and

Transfer 218-221

When a fraudulent Conveyance is set aside creditor of the grantor. Prior and Subsequently to the Conveyance, Share Pro rata Kehr v Smith, 20 wall 31.

22 L Ed 313.

112. United States Courthouse  
 280. South First Street A; 215 United States  
 San Jose, C.A. 95113. Courthouse 111, East  
 Broadway Street del  
 Rio Ty. 78840

Docket: Cr. 9400 SL

Elias Hernandez m. #72347-008/section

Instruction for Prisoner's Informal Pauper's APPL

Rule 8003 (e)-1 election to transfer APPE  
 al to District Court

(a) Transfer. The Panel may transfer an  
 appeal to the district court to further  
 the interests of Justice, such as when a  
 timely statement of election has been  
 filed in related Appeal or any other reason  
 the appeal, or for any other reason the  
 the Panel deems appropriate.

(b) Election Procedure when motion for leave  
 to Appeal is Pending. If Appellant moves  
 for leave to Appeal pursuant to FRBP  
 8003, and fails to file a separate  
 noticia of Appeal concurrently with filing  
 the motion for leave, the motion for leave  
 shall be treated as if it were a notice of  
 Appeal for purposes of calculating the  
 time period for filing an election.

### RESEARCH GUIDE

Federal Procedure:

5 B Fed Proc L Ed. Bankruptcy 9-1837  
 Craig E. Weineiman Asst. Federal Defen-  
 der Eugene CR. for Stephen Richard  
 Frank R. Papayni, U.S. Attorney Office.  
 Eugene or for U.S.

348 Fees Effect of Delay in Payment.  
Cases.

Notice of Appeal was timely filed; even though Party failed to sign check for filing fee. Gross Common Carrier v Baxter Healthcare Corp. (1995, LA 7 111) 51 F3d 703.

489. Abstract or abridgement of record.

Research. References

Am. Jur. Pleading and Practice Form, Notice Completion of Transcripts By Clerk. Appeal and error 419 abstract of record Appeal and error 598.

490. Bill of exceptions

Research References.

Am. Jur. Pleading and Practice Forms, Admission of Service Proposed amendments to Propose bill of exceptions Appeal and Error 516; Bill of exceptions General form Appeal and error. 556.

1468. Distributing obscene material by cable or subscription television.

61 Basis in equity and estoppel.

Research References

West's Key Number Digest, Adoption  
Modern Status of law as to equitable adoption or adoption by estoppel, 97 A.L.R. 3d, 347  
Equitable Adoption, 18 Am Jur. Prof. of facts.  
2d 531

472. Hardship of withholding Judicial  
Review

Research References

West's Key Number Digest Administrative  
Law and Procedure 701 to 706. 741 571  
701 to 800

The doctrine of ripeness contains an exception. The permits early review when, for example, the legal question is "fit" for resolution and delay means hardship. Hardship is present only when the Agency action in question has a direct, and immediate effect on, or causes a change in, the day to day behavior of the complaining party. The hardship involved may be, for example.

(1) exposure to Criminal Penalties for non compliance.

(2) a loss of the benefits Government Program  
Such as medical. benefits of the government Program, Such as medical.

benefits. Under Medicare or Medicaid.

(3) damage to the environment.

IX ACCESS to Adoption Record 199 to 204)

A. Access to records of concluded proceedings 199 to 203.

B. Access to Records of Pending proceedings 204)

D Persons who may be Adopted

26. Generally

27. Adults.

28. Effect of Purpose of Adoption of Adult.

29. Blood relations. ~~non marital~~ natural children.

30. Spouses non marital. Sexual. ~~Partners~~ Partners.

V. PARTIES

Research References

Adoption 11

Annotation References

A.H.A. Digest and child 16, 14

A.L.R. Index Adoption of children.

Trial. Strategy References.

32 Am. Jur. Proof of Fact 3d. 83 25

ABANDONED Lost AND UNCLAIMED

Propriety to ADJOINING LANDOWNER:

7 Key Number Table

WEST'S DIGEST REFERENCES.

1470. Transfer obscene material to minors.

28. Hasbro, Inc. v. Seratino 958 F. Supp. 19  
 (D. Mass. 1997). related reference, 966 F. Supp.

108 (D. Mass. 1997) related reference, 37 F.  
 Supp. 2d 94 (D. Mass. 1994.)

24. Weston Compagnie de finance et d.  
 Investissement S.A. v. LA Republica del Ecuador  
 823 F. Supp. 1106 (S.D.N.Y. 1993). related reference  
 1993 WL 267282 (S.D.N.Y. 1993) related reference  
 1993 WL 287644 (S.D.N.Y. 1993) (Applying New  
 York law.

Forms: Answer - Denial of Assault and battery  
 2A Am Jur Pl y Pr Forms (Rev) Assault and Battery  
 Form 201.

84 Wright v. Starr 42 Nev. 441 174 P 877.  
 6 ALR 981 (1919)

85. 61A Am Jur. 2d Pleading 287  
 186, Restatement and Uniform  
 Commercial Code.

UCC. 2-210 Involving delegation of Perfor-  
 mance and Assignment of rights was significantly  
 amended in 2003, as was the official Commentary.



Notice of Appeal.

Law Review Articles: ~~Law Review~~ Jurisdiction  
 to Review Federal Administrative Action: District  
 34. Post Office. Court of Appeals 88 Haw.  
 Action Seeking review of Postmaster General's  
 decision denying special postal rate was barred  
 by six year statute of limitations contained in 28  
 USC 2401. (a) Christian Beacon v United States (1963)  
 413 US 322 Fed 512.

205. legality of arrest of & seizure

In some instances the cases dealing with the  
 liability to attachment or garnishment of money  
 or other property taken from prisoners have  
 turned upon the question whether it was lawfully  
 and justifiably taken from the prisoners, it being  
 held that if it was unlawfully taken from him,  
 it was not subject to attachment or garnishment  
 or if the arrest or seizure has been made ille-  
 gally or in bad faith or if there was no reason-  
 able ground for believing that the property  
 taken from the prisoner had any connection  
 with the offense or could be useful as  
 evidence on the trial such property has been  
 held not subject to attachment or garnish-  
 ment. even though under the local attach-  
 ment statutes an officer can be garnished  
 for money or other property taken from  
 prisoner. while under with an arrest made

made in good faith if it APPEARS that there was Probable ground for believing the Property taken was Connected with the offense for which the arrest was made or if the Property was taken for the Proper Purpose of Use as evidence on the trial of the Charge Against the Prisoners.

Not all Courts, however regard the legality or Justifiability of the taking of money or other Property from Prisoner as a Significant factor they hold that the money or Property is not Attachable or garnishable, in Accordance with the following theories if the money or other Property was taken and held lawfully and Justifiably then in the absence of special Statute on the subject the property is not Attachable, or garnishable.

because it is in custodia legis if it was taken and held illegally and ~~unjustly~~ unjustifiably, it is not Subject to Process. because the officer was a trespasser with no right to the money or Property and the Prisoner is entitled to its return.

FEDERAL CIVIL JUDICIAL PROCEDURE AND RULES INDEX  
 References are to United States Code Annotated unless otherwise noted.  
 Constitution of the United States (see text following Appendix)  
 Citation ABBREVIATIONS

FRCP

Federal Rules of Civil Procedure.

MDL

Rules of Procedure of the Judicial

Panel on multidistrict litigation.

Rules Governing Section 2254 Cases (Habeas

Corpus Juris)

Rules Governing Section 2255 Proceeding of 1948 not (motion for taking sentence) in

FRE. Federal Rules of Evidence

F.R.A.P. Federal Rules of Appellate Procedure

1991 SC. Rules of the Supreme Court of the United

States

Executive Order: Membership

note

1947 District Court fee on filing notice of or Petition for Appeal

Upon the filing of any separate or joint notice of APPEAL or APPLICATION for APPEAL or UPON the receipt of any order allowing or notice of the allowance of an APPEAL or of a writ of certiorari \$5 shall be paid to the clerk of the district court by the APPELLANT or Petitioner (June 29, 1948, 696, 62 Stat 1955)

2413. Executions in Favor of United States.

A writ execution on a judgment obtained for the use of the United States in any court thereof shall be issued from and made returnable to the court which rendered the judgment, but may be executed in any other State, in any territory or the District of Columbia (June 25, 1948, c. 846 62 Stat. 974).

2522. Notice of Appeal.

Review of a decision of the United States Court of Federal Claims shall be obtained by filing a notice of appeal with the court of Federal Claims within the time and in the manner prescribed for appeals to United States Courts of Appeals from the United States District Courts.

Added Pub. L. 97-164 Title I (34-49) (1) Apr 2 1982, 96 Stat. 44. and Amended Pub. L. 102-572, title ix, 402 (a), Oct 29 1992, 106 Stat. 4516.)

HISTORICAL AND STATUTORY NOTES

effective and applicability provisions

1992 Acts. Amendment by title ix of Pub. L. 102, 572

effective Oct. 29 1992. See section 911 of Pub. L. 102

572, set out as a note under section 171 of title

28, Judiciary and Judicial Procedure

1982 Acts. Section effective Oct. 1 1982. See Section

402 of Pub. L. 97-164. Set out as a note under

section 171 of this title.

the owner of a railroad, although in debt to those who aid in constructing it ~~but~~ by furnishing material may still execute a mortgage on it which will be good against unsecured creditor Poster v Pittsburgh Bessemer Steel Co (Poster v Pittsburgh Bessemer Steel Co, 120 US 646 75 Ct 1206).

17.5 military or Post roads

Research References

39 Am Jur 2d, Highways Streets, and Bridges 300

40 Am Jur 2d, Highways Streets, and Bridges 473 475

Cross references

Postal route telegraph line over See Supra. 17

Scope of Topic: this topic covers crimes based on the killing of a human being by the by intent agency. or omission of another. Such as murder negligent homicide, and voluntary or involuntary manslaughter and excuses of defences pertaining to such crimes what reduces a killing to manslaughter, and excuses and defences pertaining to such crimes. Also covered are civil and criminal aspects generally, or suicide and attempts to commit suicide.

Treated elsewhere are civil liability for homicide (See Death) and former jeopardy. Insanity and intoxication as defenses to homicide (See Criminal Law) Matters as to Procedure and Proof are treated in such topics as Appeal: Criminal Law: evidence. indictments And Informations and trial.

### III treaties.

27 Generally

28 terms, and construction generally

29 force and effect.

31 Paramount Power of Congress.

### IV. tribal Rights and liabilities.

32 generally.

Distinguished in Ash Sheep Co. v United States. 252 U.S. 164 64 L Ed 510, 40 S Ct 241 enjoining grazing of sheep on Indian land without their consent.

39.5 tribal leases.

88. consent to lease.

Distinguished in United States v michell. 271 U.S. 111, 70 L Ed 601, 46 S. 418 where estate income tax return is made on basis of income actually received in taxable year there may not be deducted estate tax accruing that year but paid following year.



Distinguished Amoco Production  
 Co v Gambrell, 480 US 202, 94 Ld Ed 1542,  
 107 Sct Ct 1396, holding that Bld of  
 Alaska National Interest Land Conservation  
 Act (16 USC 3120) which protects subsisten-  
 ce uses of certain public lands. Applies only  
 to lands within boundaries of Alaska,  
 which do not encompass outer Continental  
 Shelf.

United States  
 Supreme Court Digest

Lawyers Edition  
 Issued December 2006  
 Cumulative Supplement  
 10 2004 Bound  
 Volume 8 A

By Publisher Editorial Staff  
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 L. Ed 24015 (157 p 1060 - 165  
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 5410 v.s (Part) 152 L Ed 2d p. 1059-121  
 Sct (Part)



1314. Civil to restrain harassment of a victim or witness.  
(a) (1) A United States district court upon applicable

470. Payment.

Cross References

Due Process to, see infra 724.

Singling out persons firms or corporations engaged in mining and manufacturing as the ones to be forbidden to issue orders for the payment of labor not purporting to be redeemable in money as is done by Va act of February 13, 1888 Amending and re enacting law 1887, Chap 391, 3 does not render such statute invalid under US Const, 14th Amend. as class legislation denying the equal protection of the laws. Keokee Consol. Coke Co v. Taylor 234. U.S. 224. 34 S. Ct. 858.

58 L. Ed 128

made in good faith if it appears that there was probable ground for believing the property taken was connected with the offense for which the arrest was made or if the property was taken for the proper purpose of use as evidence on the trial of the charge against the prisoners.

Not all courts, however regard the legality or justifiability of the taking of money or other property from prisoner as a significant factor they hold that the money or property is not attachable or garnishable, in accordance with the following theories if the money or other property was taken and held lawfully and justifiably then in the absence of special statute on the subject the property is not attachable, or garnishable. because it is in custodia legis if it was taken and held illegally and ~~unjustifiably~~ unjustifiably, it is not subject to process. because the officer was a trespasser with no right to the money or property and the prisoner is entitled to its return.

noticia of APPEAL.

170 Dividends

24. Freedom of Information Act.

40. Unloaded firearm

SHEPARD'S Citations Service. For further re-  
search authorities referenced here, use  
SHEPARD. to be sure your case or statute  
is still good law and to find additional  
authorities that support your position SHEPARD  
is available exclusively from Lexis Nexis

207. Property of Person under guardianship.

34. State v Hough 585 N.W 2d 393 (Minn. 1999)  
Annotations: Teacher's civil liability for admini-  
stering Corporal Punishment to Pupil, 43

A.L. R 2d 469 7 (a)

83. Thompson v Johnson

12d 341 Cir. 1950. (Applying Mississippi law) Martin v EB  
431 54 245 Wis. 341 13 N.W 2d 907, 152 A.L.R. 1142  
(1944)

Attachment A  
SPG4330.13U.S. MEDICAL CENTER FOR FEDERAL PRISONERS  
SPRINGFIELD, MISSOURIAdministrative Remedy System  
Informal Resolution Form

**NOTICE TO INMATE/PATIENT:** You are advised that prior to filing a Request for Administrative Remedy Form (BP-9), you **MUST** attempt to informally resolve your complaint through your Correctional Counselor. Please follow the three (3) steps listed below:

1. State below your specific complaint.
2. State below what efforts you have made to resolve your complaint informally.
3. State below what action or resolution you expect.

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Signature	Reg. No.	Date
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Correctional Counselor's Comments (Including actual steps taken to resolve).

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Counselor's Signature	Date
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## Distribution:

- I. If complaint is informally resolved, forward original to the ~~Administrative Remedy Coordinator~~ **Coordinator**.
- II. If complaint is NOT informally resolved, forward original attached to BP-9 Form to the ~~Administrative Remedy Coordinator~~.
- III.

Form Returned To Counselor	BP-9 Given To Inmate	BP-9 Returned To Counselor	BP-9 Delivered To Atty Advisor
-------------------------------	-------------------------	-------------------------------	-----------------------------------

Date \_\_\_\_\_  
 Time \_\_\_\_\_  
 Counselor \_\_\_\_\_

Richard W. WIE King  
CLERK.

260 SOUTH First st. Suite 2112

SAN JOSE 95113

(408) 535 5363

Tax (408) 535-5360

Petition Hc. 6-02.wpd. (Rev. 6-02)

Pris. APPLIC. To Protn Form.

PAUPER'S. case No. CR 9400 SL.

Prisoners

Application. to Proceed

In forma pauperis.

1092 END

1-1091

Contract 517A

Section 59.14

Restatement Second Agency 470, 18 USCA 1201 (a)

## CHAPTER. 158. ORDER OF FEDERAL AGENCIES: REVIEW.

2341 Definitions.

### RESEARCH GUIDE

Texts: 1C: Benedict on Admiralty. Adjudications 37.

2347. Petitions to review; Proceedings  
Research. guide

Federal Procedure:

2 Fed Proc L Ed, Administrative Procedure 2,263  
266, 273, 276, 288, 306, 369, 377, 381, 401

8. Immigration Law Procedure (rev ed.) Ch 104.  
Judicial. Review 104.05 104.13.

Texts: L. Benedict on Admiralty Adjudications 37.

142. Unchecked law.

Trial. Court did not Abuse its discretion in holding that government's litigation Position was Substantially Justified Pursuant to 28 USC 2412(d) (1)(A), Part to Equal Access to Justice Act: gratuitous boiler was truly properly denied Attorney fees. United States v 100,348.00 in United States currency (2004, CA9 cal) 354 F3d 1110.

Prevailing taxpayer was denied Attorney fees because government Position that notice of Determination was not required was Substantially Justified until new decision was rendered by tax court, and the government acted quickly to correct error TCS Auto Wholesale Inc. Beene. (2002 ED was 2002-2 USTC 50752-90 AFTR 2d 6754.

In suit by Attorney Seeking writ of mandamus to recover Payment of fee award from Commissioner of Social Security, because question of whether jurisdiction existed was uncertain at

where government unsuccessfully sought dismissal of enlisted men's Appeal of decision by Army Board for military Record for lack of subject matter Jurisdiction under Little Tucker Act. 28 U.S.C. 1346 Award of Attorney fees to enlisted man. Pursuant to Equal Acces. to Justice Act. 28 USC 2412 was not warranted. Government's decision to ~~port~~ <sup>seize</sup> motion to dismiss for lack of Jurisdiction was reasonable and substantially justified because Court's Jurisdiction under Little Tucker Act was not as clear as enlisted man represented Callo way v Brown ~~1998~~. 2005. DC. Dist. Cal.) 400 F Supp 2d 52.

#### 46. Law governing.

For federal. Tort Act Claims 28. USC 1331 et. seq. Claims. question of when cause of Action accrues. is matter of federal. law. Pace v United States. (2003. 10 F.1a) 18 F.L.W Fed. D 476.

Text. Benedict on Admiralty. Adjudications 37.

B. Tolling limitations. Period

72. generally

fraudulent concealment and duress are both available for tolling. Claims Under Federal. Tort Claims Act Rates. v United States (2001 Cal Mass) 442 F3d 7.



F. Lias Hernandez m.

#72347-008

Medical Center for Federal Prisoners.

Springfield Missouri 65801-4000

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